

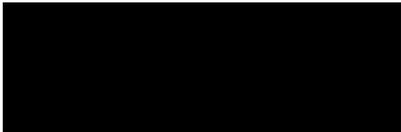
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U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: ORLANDO, FL

Date: NOV 29 2007

IN RE:

Applicant:



APPLICATION: Application for Permanent Residence Pursuant to Section 1 of the Cuban Adjustment Act of November 2, 1966 (P.L. 89-732)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Acting Field Office Director, Orlando, Florida who certified her decision to the Administrative Appeals Office (AAO) for review. The Acting Field Office Director's decision will be affirmed.

The applicant is a native and citizen of Cuba who filed the application for adjustment of status to that of a lawful permanent resident under Section 1 of the Cuban Adjustment Act (CAA) of November 2, 1966. The CAA provides, in part:

[T]he status of any alien who is a native or citizen of Cuba and who has been inspected and admitted or paroled into the United States subsequent to January 1, 1959 and has been physically present in the United States for at least one year, may be adjusted by the Attorney General [now the Secretary of Homeland Security, (Secretary)], in his discretion and under such regulations as he may prescribe, to that of an alien lawfully admitted for permanent residence if the alien makes an application for such adjustment, and the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence.

The Acting Field Office Director found the applicant inadmissible to the United States because she falls within the purview of Section 212(a)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2). The Acting Field Office Director, therefore, concluded that the applicant was ineligible for adjustment of status and denied the application accordingly. *See Acting Field Office Director's Decision*, dated July 17, 2007.

Section 212(a)(2) of the Act states in pertinent part:

- (A) Conviction of certain crimes.-
  - (i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-
    - (I) a crime involving moral turpitude . . . or an attempt or conspiracy to commit such a crime . . . is inadmissible.
    - (II) a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)) . . . is inadmissible.

Section 212(h) of the Act provides, in pertinent part:

- (h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I), (B), (D), and (E) of subsection (a)(2) and subparagraph (A)(i)(II) of such subsection insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana if—
  - (B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General [Secretary] that the alien's denial

of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien . . .

The record establishes that on February 6, 1989 the applicant was convicted of carrying a concealed weapon in the state of Florida. *Court records, Criminal Division of the Circuit Court Eleventh Judicial Circuit, Dade County, Florida.* The applicant was sentenced to credit for time served of two days, instructed to forfeit her weapon, and ordered to pay court costs. *Id.* On August 10, 1993 the applicant was convicted of possession of cocaine in the state of Florida. *Court records, Circuit Court of the Eleventh Judicial Circuit, Dade County, Florida.* The applicant was sentenced to credit for time served of one day and ordered to pay court costs. *Id.*

On notice of certification, the applicant was offered an opportunity to submit evidence in opposition to the Acting Field Office Director's findings. The applicant did not submit any additional brief or written statement. Based on her controlled substance conviction, the applicant is subject to the provisions of sections 212(a)(2)(A)(i)(II) of the Act. In that her conviction was for other than possession of 30 or fewer grams of marijuana, no waiver is available to her under section 212(h) of the Act. The applicant is, therefore, ineligible for adjustment of status to permanent residence, pursuant to Section 1 of the CAA of November 2, 1966. As the applicant is statutorily inadmissible to the United States on the basis of her controlled substance conviction and no waiver of that inadmissibility is available, the AAO will not consider whether her conviction for carrying a concealed weapon is a crime involving moral turpitude that would also render her inadmissible to the United States.

An applicant must demonstrate by a preponderance of the evidence that he or she is eligible for the benefit sought. Section 291 of the Immigration and Nationality Act, 8 U.S.C. § 1361, places the burden of proof upon the applicant to establish that eligibility. The applicant has not met her burden of proof in this particular case. The decision of the Acting Field Office Director to deny the application will be affirmed.

**ORDER:** The Acting Field Office Director's decision is affirmed.